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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 **WAYNE JEROME ROBERTSON,**

13 Plaintiff,

14 **v.**

15 **SGT. W. STRUFFERT, et al.,**

16 Defendants.  
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C 12-4698

**STIPULATED PROTECTIVE ORDER**

1     **1.    PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action may involve production of  
3     information related to corrections facility security measures, corrections facility intelligence and  
4     investigative records, and other confidential, proprietary, or private information for which special  
5     protection from public disclosure and from use for any purpose other than prosecuting this  
6     litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to  
7     enter the following Stipulated Protective Order. The parties acknowledge that this Order does not  
8     confer blanket protections on all disclosures or responses to discovery and that the protection it  
9     affords from public disclosure and use extends only to the limited information or items that are  
10    entitled to confidential treatment under the applicable legal principles. The parties further  
11    acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not  
12    entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13    procedures that must be followed and the standards that will be applied when a party seeks  
14    permission from the court to file material under seal. The parties further acknowledge that this  
15    Protective Order does not nor is it intended to prevent Plaintiff from having access to any  
16    documents, such as his own medical and mental health records, which he would be entitled to  
17    review had the documents not been produced through the discovery process in this lawsuit.

18    **2.    DEFINITIONS**

19           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
20    information or items under this Order.

21           2.2    “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Information or Items:  
22    information (regardless of how it is generated, stored or maintained) or tangible things that  
23    qualify for protection under Federal Rule of Civil Procedure 26(c) and that constitute or disclose  
24    information which if publically disclosed would threaten the privacy rights or safety and security  
25    of any inmate, prison staff member, or third party.

26           2.3    Counsel (without qualifier): Counsel of Record (as well as their support staff).

27           2.4    Designating Party: a Party or Non-Party that designates information or items that  
28    it produces in disclosures or in responses to discovery as “CONFIDENTIAL-ATTORNEYS’

1 EYES ONLY.”

2 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
3 medium or manner in which it is generated, stored, or maintained (including, among other things,  
4 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
5 responses to discovery in this matter.

6 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
7 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
8 consultant in this action.

9 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal  
10 entity not named as a Party to this action.

11 2.8 Party: any party to this action, including all of its officers, directors, employees,  
12 consultants, retained experts, and Counsel of Record (and their support staffs).

13 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
14 Material in this action.

15 2.10 Professional Vendors: persons or entities that provide litigation support services  
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
17 organizing, storing, or retrieving data in any form or medium) and their employees and  
18 subcontractors.

19 2.11 Protected Material: any Disclosure or Discovery Material that is designated as  
20 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

21 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
22 Producing Party.

### 23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only Protected Material  
25 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
26 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
27 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
28 However, the protections conferred by this Stipulation and Order do not cover the following

information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### 4. **DURATION**

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### 5. **DESIGNATING PROTECTED MATERIAL**

5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated

for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL-ATTORNEYS EYES’ ONLY” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL ATTORNEYS EYES’ ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
3 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
4 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
5 original designation is disclosed.

6       6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
7 by providing written notice of each designation it is challenging and describing the basis  
8 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
9 notice must recite that the challenge to confidentiality is being made in accordance with this  
10 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
11 good faith and must begin the process by conferring directly (either in voice-to-voice dialogue or  
12 in writing) within 14 days of the date of service of notice. In conferring, the Challenging Party  
13 must explain the basis for its belief that the confidentiality designation was not proper and must  
14 give the Designating Party an opportunity to review the designated material, to reconsider the  
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
16 designation. A Challenging Party may proceed to the next stage of the challenge process only if  
17 it has engaged in this meet-and-confer process first or establishes that the Designating Party is  
18 unwilling to participate in the meet-and-confer process in a timely manner.

19       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
20 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding  
21 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining  
22 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties  
23 agreeing that the meet-and-confer process will not resolve their dispute, whichever is  
24 earlier. Failure by a Designating Party to file such discovery dispute letter within the applicable  
25 21 or 14 day period (set forth above) with the Court shall automatically waive the confidentiality  
26 designation for each challenged designation. If, after submitting a joint letter brief, the Court  
27 allows that a motion may be filed, any such motion must be accompanied by a competent  
28

1 declaration affirming that the movant has complied with the meet-and-confer requirements  
 2 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
 3 discovery matter to a Magistrate Judge.

4 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality  
 5 designation at any time if there is good cause for doing so, including a challenge to the  
 6 designation of a deposition transcript or any portions thereof. If, after submitting a joint letter  
 7 brief, the Court allows that a motion may be filed, any motion brought pursuant to this provision  
 8 must be accompanied by a competent declaration affirming that the movant has complied with the  
 9 meet-and-confer requirements imposed by the preceding paragraph. The Court, in its discretion,  
 10 may elect to transfer the discovery matter to a Magistrate Judge.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 12 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
 13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 14 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 15 file a letter brief to retain confidentiality as described above, all parties shall continue to afford  
 16 the material in question the level of protection to which it is entitled under the Producing Party's  
 17 designation until the court rules on the challenge.

## 18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 20 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 21 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
 22 to the categories of persons and under the conditions described in this Order. When the litigation  
 23 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
 24 (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and  
 26 in a secure manner that ensures that access is limited to the persons authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL – ATTORNEYS EYES ONLY" Information or  
 28 Items.

1 This Protective Order is intended to and does preclude each Party's Counsel of Record  
 2 from disclosing documents and information designated "CONFIDENTIAL-ATTORNEYS  
 3 EYES' ONLY" to Plaintiff Wayne Robertson, his family, friends, or associates, to any inmate or  
 4 parolee, to the general public. It is agreed by the Parties and ordered by the Court that the  
 5 information designated "CONFIDENTIAL –ATTORNEYS EYES' ONLY" is never to be  
 6 disseminated or discussed with any inmates, including a Party or witness, parolee, or the public,  
 7 in this case or in any other capacity, unless there is a successful challenge to such information  
 8 under section 6 of this order. In the event the Receiving Party believes that the information  
 9 designated "CONFIDENTIAL – ATTORNEYS EYES' ONLY" needs to be discussed with their  
 10 client or another person not identified below, the Receiving Party must first contact the  
 11 Designating Party to discuss disclosure of the specific record, in accordance with the provisions  
 12 of section 6 of this order.

13 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
 14 Receiving Party may disclose any information or item designated "CONFIDENTIAL -  
 15 ATTORNEYS EYES' ONLY" only to:

16 (a) the Receiving Party's Counsel of Record in this action, including their support  
 17 staff;

18 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 19 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
 20 Agreement to Be Bound" (Exhibit A);

21 (c) the court and its personnel;

22 (d) court reporters and their staff, professional jury or trial consultants, mock jurors,  
 23 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
 24 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (e) the author or recipient of a document containing the information or a custodian or  
 26 other person who otherwise possessed or knew the information.

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1     **8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 2     **OTHER LITIGATION**

3           If a Party is served with a subpoena or a court order issued in other litigation that compels  
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL –  
 5 ATTORNEYS EYES’ ONLY,” that Party must:

6           (a) promptly notify in writing the Designating Party. Such notification shall include a  
 7 copy of the subpoena or court order;

8           (b) promptly notify in writing the party who caused the subpoena or order to issue in  
 9 the other litigation that some or all of the material covered by the subpoena or order is subject to  
 10 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
 11 and

12           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 13 Designating Party whose Protected Material may be affected.

14           If the Designating Party timely seeks a protective order, the Party served with the  
 15 subpoena or court order shall not produce any information designated in this action as  
 16 “CONFIDENTIAL – ATTORNEYS EYES’ ONLY” before a determination by the court from  
 17 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
 18 permission. The Designating Party shall bear the burden and expense of seeking protection in  
 19 that court of its confidential material – and nothing in these provisions should be construed as  
 20 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
 21 another court.

22     **9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
 23     **THIS LITIGATION**

24           (a) The terms of this Order are applicable to information produced by a Non-Party in  
 25 this action and designated as “CONFIDENTIAL – ATTORNEYS EYES’ ONLY.” Such  
 26 information produced by Non-Parties in connection with this litigation is protected by the  
 27 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
 28 prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed material labeled "CONFIDENTIAL – ATTORNEYS EYES' ONLY" to any person other than those permitted access under paragraph 7.2 of this order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures specifically identifying the person or persons to whom the unauthorized disclosure was made, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

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**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

**12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the

Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

12.4 Redaction of Personal Information. The Designating Party is permitted to redact any and all sensitive personal information from the Protected Material produced under this protective order. The parties agree that the term “sensitive personal information” shall mean all home addresses, social security numbers, credit card numbers, names of spouses, children, or other family members, birthdates, and any other similar, sensitive information implicating an individual’s privacy rights. If the Receiving Party believes the redaction to be inappropriate, it shall challenge the redaction using the procedure identified in paragraph 6 of this order.

12.5 Plaintiff, Defendant, and their Counsel of Record, agree to be bound by the terms of the Stipulated Protective Order and understand and acknowledge that failure to comply with its terms could expose them jointly, or individually, to sanctions and punishment in the nature of contempt.

### **13. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to

1 this Protective Order unless the Designating Party agrees in writing to remove the confidentiality  
2 restriction, or the court orders otherwise.

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 Dated: December \_\_, 2014

KAMALA D. HARRIS  
Attorney General of California  
MARISA Y. KIRSCHENBAUER  
Supervising Deputy Attorney General

8  
9 s/ Michael J. Quinn  
MICHAEL J. QUINN  
Deputy Attorney General  
Attorneys for Defendant

12 Dated: December \_\_, 2014

14 s/ Lori Rifkin  
LORI RIFKIN  
Rifkin Law Office  
Attorneys for Plaintiff

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: January 26, 2015

21   
JEFFREY S. WHITE  
United States District Judge

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25 41176066.doc

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Northern District of California  
on [date] in the case of *Wayne Jerome Robertson v. W. Struffert, et al.*, Case No. 12-4698  
(N.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
manner any information or item that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

## CERTIFICATE OF SERVICE

Case Name: Robertson v. Struffert, et al.

No. C 12 4698

I hereby certify that on January 9, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### STIPULATED PROTECTIVE ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 9, 2015, at San Francisco, California.

D. Criswell  
Declarant

s/ D. Criswell  
Signature